MEETING OF THE COMMISSION OF FINE ARTS
16 OCTOBER 1958

ORDER OF BUSINESS

9:30 a.m. 1. CONVENE, ROOM 7000 INTERIOR DEPARTMENT BUILDING

9:35 a.m. 2. DATE OF NEXT MEETING: 20 November 1958 (?)

9:40 a.m. 3. BRIEFING ON ORDER OF BUSINESS.

9:45 a.m. 4. AMERICAN BATTLE MONUMENTS COMMISSION SUBMISSION: Honolulu, Hawaii American Military Cemetery, 33" scale model of sculpture. (Brig. Gen. Thos. North, Secy., ABMC; Mr. John Harbeson, Architect; Mr. Bruce Moore, Sculptor)

10:15 a.m. 5. SHIPSTEAD-LUCE SUBMISSION #2113 (Folger Library) 201 East Capitol St., SE - Build basement & 1-story addn. at rear of present bldg. (Mr. John Harbeson, Architect).

10:30 a.m. 6. D. C. HIGHWAY DEPARTMENT SUBMISSIONS:

(a) Fourteenth Street Bridge.

(b) Washington Channel Bridge.

(c) Southwest Freeway from 4th St. to 11th St.

11:00 a.m. (Chairman will meet at White House with selected Committee on change to U. S. Flag)

11:30 a.m. 7. PUBLIC BUILDINGS SERVICE SUBMISSIONS:

(a) Cooling plant in interior court of Internal Revenue Bldg. (Mr. Horace Peaslee, Arch; Mr. E. E. Witherell, Chief of Design Branch, PBS; Mr. J. Rowland Snyder, Dr., Architectural & Structural Division, PBS)

12:00 m. 8. NATIONAL CAPITAL PLANNING COMMISSION:

(a) Federal Office Bldg. #10 - location. (Mr. Ellis F. Price, Chief of Project Plans, NCPC).

12:30 p.m. 9. DISCUSSIONS:

(a) Ltr. from American Planning & Civic Assn. re location of Theodore Roosevelt Bridge. Ltr. dated 9/18/58.

(b) Theodore Roosevelt Bridge - status.

(c) Ltr. from Mr. Wiggins of Washington Post & Times Herald, dated 9/19/58 re admission of reporters to Commission of Fine Arts' meetings.

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9. DISCUSSIONS (Continued):

(d) Site for Memorial to Scouts.

(c) Commission's budget for fiscal year 1960.

1:00 p.m. LUNCH

2:00 p.m. 10. D. C. COMMISSIONERS AND CORPORATION COUNSEL - Discussion of Public Law 808-81st Congress (Mr. Walter M. Macomber, Mr. John B. Coughlin, Mr. Henry H. Saylor, members of the Board of Architectural Consultants for Georgetown).

3:00 p.m. 11. DEPARTMENT OF THE ARMY, HERALDIC BRANCH SUBMISSIONS:

(a) Seal for Administrative Office of U. S. Courts.

(b) U. S. Air Force Distinguished Service Medal (2 designs)

3:30 p.m. 12. REVIEW OF NCPC SUBMISSION - Land Acquisitions:

(a) Lot 800, Sq. 1928, Neighborhood Park at Wisconsin and Massachusetts Avenues, NW

(b) Lots 10, 11, 33, 34, Sq. 5496; Fort Dupont Park Addn.

(c) Lots 7 to 12, Lot 814, Sq. 4066, Wheatley School Playground Addn.

(d) Parcel 174/15, Sect. "H"; Fort Drive Addn.

3:45 p.m. 13. SHIPSTEAD-LUCE SUBMISSIONS:

(a) SL 2118 (Shoreham Hotel) 2500 Calvert St., NW - 5-story addn. to Shoreham Hotel.

(b) Trinity Lutheran Church (revised rendering). See SL 2111 (R 2037) for previous rendering.

(c) Report of actions taken on Shipstead-Luce Act Applications since 11 September meeting (See Appendix 1).

4:15 p.m. 14. REPORT OF ACTIONS TAKEN ON OLD GEORGETOWN ACT APPLICATIONS SINCE 11 SEPTEMBER MEETING (See Appendix 2).

9. DISCUSSIONS (Continued):

(d) Site for Memorial to Scouts.

(e) Commission's budget for fiscal year 1960.

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Witnesses Appearing Before the Meeting
of the Commission of Fine Arts on 16 October 1958
In Connection with the Following Submissions

- -

CORPORATION COUNSEL'S OPINION ON
PUBLIC LAW 808, 81st CONGRESS

Honorable Robert E. McLaughlin, President) D. C. Board of Commissioners
Honorable David B. Karrick, Member)

Mr. Chester Gray, Corporation Counsel
Mr. Robert F. Kneipp, Assistant Chief

Mr. J.P. Green, Chief, Permit Branch

Mr. Walter M. Macomber) Members of Old Georgetown Board of Architectural
Mr. John Coughlin) Consultants
Mr. Henry Saylor)

Mr. James Dean, representing THE WASHINGTON STAR
Mr. Jack Eisen, representing THE WASHINGTON POST AND TIMES HERALD
Miss Martha Strayer, representing THE WASHINGTON NEWS

AMERICAN BATTLE MONUMENTS COMMISSION

a. Memorial for American Military Cemetery in Honolulu
Brig. Gen. Thomas North, Secretary, American Battle Mon. Commn.
Mr. John Harbeson, Architect
Mr. Bruce Moore, Sculptor

GENERAL SERVICES ADMINISTRATION, PUBLIC BUILDINGS SERVICE

a. Cooling tower in interior court of Internal Revenue Building
Mr. Horace Peaslee, Architect
Mr. E. E. Witherell, Chief of Design Branch, PBS
Mr. J. Rowland Snyder, Dir., Architectural & Structural Div., PBS

NATIONAL CAPITAL PLANNING COMMISSION

a. Relocation of Federal Office Building #10
Mr. Ellis F. Price, Chief of Project Plans, NCPC

GOVERNMENT OF THE DISTRICT OF COLUMBIA, Highway Department

a. Fourteenth Street Bridge; b. Washington Channel Bridge; c. Southwest Freeway from 4th to 11th Streets.
Mr. G. I. Sawyer, Chief, Off. of Planning, Design and Engrg.
Mr. Edmond Burke, Supervisor, Bridge Design Engineer
Mr. John Grady, Architect
Mr. William J.H. Hough, Architect of Harbeson, Hough, Livingston and Larson;
Mr. Ray Stauffer of Gannet & Fleming

SHIPSTEAD-LUCE ACT SUBMISSION

a. Addition to Folger Shakespeare Library
Mr. John Harbeson, of Harbeson, Hough, Livingston and Larson

The Washington Post
AND
Times Herald

1515 L STREET, N.W. WASHINGTON 5, D.C. REPUBLIC 7-1234

WIGGINS
TOR

September 19, 1958

Mr. David E. Finley
Chairman
The Commission of Fine Arts
Interior Department Building
Washington, D. C.

Dear Mr. Finley:

Our city desk continues to report to me that they have difficulty in covering the meetings of The Commission of Fine Arts. We have gone over this before, but not much improvement seems to have resulted.

Our reporters have access to the meetings of the Planning Commissions and Board of Commissioners and other agency sessions, and it is our belief that there is no logical distinction between their situation and yours. Many of them deal with the work of other agencies than their own but do not find this an adequate reason for closing their doors.

It really is the public's business that is being transacted in your sessions and it seems illogical to withhold from them information about their own affairs.

Sincerely yours,

J. R. Wiggins

J. R. Wiggins
Executive Editor

Exhibit A

DISTRIBUTE TO MEMBERS
9-25-58

October 22, 1958

Dear Mr. Wiggins:

In further reply to your letter of September 19th, I brought your letter to the attention of the Commission of Fine Arts at our meeting on October 16th. After some discussion, the members decided that, in a case involving a discussion of facts, such as the Old Georgetown Act which was scheduled for the afternoon session, it would be helpful to have members of the press present and to report the discussions and any decisions that might be made by the District of Columbia Commissioners, or the Commission of Fine Arts. We accordingly asked Mr. Eisen of your paper, and reporters from the other local papers, to be present. They were most helpful in acquainting the public with the difficulties of administering the Old Georgetown Act, owing to the conflicting interpretations placed on the Act by the District of Columbia Commissioners and by the Commission of Fine Arts and its Board of Architectural Consultants.

We shall, in the future, be glad to advise the press when other situations arise where public interest is involved and where it would be helpful to have the facts or our recommendations known immediately. The members of the Commission of Fine Arts, however, do not believe that this practice could apply to all discussions which may be held by the Commission in trying to arrive at a conclusion as to what advice should be tendered to other government agencies having responsibility of making a decision on design problems and in carrying that decision into effect.

The Commission of Fine Arts, as you know, has only an advisory function and the responsibility, in the final analysis, rests with each administrative agency which should, of course, itself acquaint the public with its decisions. In many cases, although the advice of the Commission may not be followed, we announce, at the conclusion of our meetings, the recommendations that have been given, unless the agency concerned desires to keep the matter under consideration and for this reason prefers that no announcement should be made until the agency itself has reached a final decision.

I do not need to add that we value very much, indeed, the understanding and support of newspapers such as yours, and the Secretary of the Commission is ready at all times to confer with your reporters.

Sincerely yours,

David E. Finley
Chairman

Mr. J. R. Wiggins, Executive Editor
The Washington Post and Times Herald
1515 L Street, N. W.
Washington 5, D. C.

LRW

March 6, 1957

6

TO THE COMMISSIONERS

IN RE: Extent of the applicability of the "Old Georgetown Act" of September 22, 1950, to buildings, signs and other structures.

This office has had referred to it from time to time within the past two years several matters concerning the applicability of the Act approved September 22, 1950 (64 Stat. 904; Title 5, Chap. 8, D. C. Code 1951), known as the "Old Georgetown Act". These matters indicate a need for an interpretation of the Old Georgetown Act, to the end that the District of Columbia Government, the Commission of Fine Arts, and the general public will have a guide with respect to the Act's application, with particular reference to sections 2, 3 and 5 thereof, which read as follows:

"SEC. 2. In order to promote the general welfare and to preserve and protect the places and areas of historic interest, exterior architectural features and examples of the type of architecture used in the National Capital in its initial years, the Commissioners of the District of Columbia, before issuing any permit for the construction, alteration, reconstruction, or razing of any building within said Georgetown district described in section 1 shall refer the plans to the National Commission of Fine Arts for a report as to the exterior architectural features, height, appearance, color, and texture of the materials of exterior construction which is subject to public view from a public highway. The National Commission of Fine Arts shall report promptly to said Commissioners of the District of Columbia its recommendations, including such changes, if any, as in the judgment of the Commission are necessary and desirable to preserve the historic value of said Georgetown District. The said Commissioners shall take such actions as in their judgment are right and proper in the circumstances: Provided, That, if the said Commission of Fine Arts fails to submit a report on such plans within forty-five days, the approval thereof shall be assumed and a permit may be issued.

"SEC. 3. In carrying out the purpose of this Act, the Commission of Fine Arts is hereby authorized to appoint a committee of three architects, who shall serve as a board of review without expense to the United States and who shall advise the Commission of Fine Arts, in writing, regarding designs and plans referred to it.

Exhibit B

"SEC. 5. Nothing contained in this Act shall be construed as superseding or affecting in any manner any Act of Congress heretofore enacted relating to the alteration, repair, or demolition of insanitary or unsafe dwellings or other structures.

"Approved September 22, 1950."

It has become apparent, in the more than six years since the Old Georgetown Act became effective, that its language, and particularly that in section 2, is subject to a wide variety of interpretations. Thus, it has been contended that the term "razing" appearing in section 2 has the effect of requiring that the Commission of Fine Arts approve the demolition of a building found to be insanitary and ordered removed by the Board for the Condemnation of Insanitary Buildings (CCO: 442.1 - Georgetown University, 3601 - 3603 O Street, N. W.). It has also been contended that the Act is applicable to the construction of swimming pools, the erection of signs, and the placing of decorative tiles on the front of a building. Without, at this point, deciding whether the Act is or is not applicable under such circumstances, these examples are offered to demonstrate that the language of section 2 is susceptible of differing interpretations. Accordingly, it appears advisable that some effort be made to determine the scope of the Act, the interpretation to be given section 2 particularly, and, if the Act be not clear with respect to its scope and the interpretation to be given it, the intent of the Congress in enacting it.

The purpose of the Act, to repeat a portion of section 2, quoted in full above, is

> "* * * to promote the general welfare and to preserve and protect the places and areas of historic interest, exterior architectural features and examples of the type of architecture used in the National Capital in its initial years,* * *."

These are some of the standards that are to be applied in connection with building activities within the area delimited by the first section of the Act. But standing alone, this language of the Act is vague and indefinite. It is to be remembered that the District of Columbia, when it was established as the Seat of Government of the United States, pursuant to the authority contained in Section 8 of Article I of the Constitution, consisted of the County of Washington, on the east side of the Potomac, and the County of Alexandria, on the west side. The City of Washington was incorporated in 1802, and until 1846 the District of Columbia consisted of the City of Washington, the County of Washington, the City of Georgetown, the City of Alexandria, and the County of Alexandria. After the 1846 Act to retrocede the County of Alexandria to the State of Virginia, until 1871, the District of Columbia consisted of the first three areas, and in 1871, the District of Columbia was formally

created a body corporate for municipal purposes. The term "National Capital" used in the Old Georgetown Act must, of course, be considered as having reference to the permanent Seat of Government of the United States, which, in its initial years, as noted above, included the cities of Washington, Alexandria, and Georgetown, and the counties of Washington and Alexandria. The "type of architecture used in the National Capital in its initial years" has reference, therefore, to all kinds of architecture to be found throughout the District of Columbia in the early years, including the farmhouses in the outlying regions, and the store- and warehouses in the commercial centers of Alexandria and Georgetown, as well as the residences, rich and poor, in the built-up areas of the three cities within the boundaries of the District of Columbia.

The above-quoted portion of section 2 of the Act was he contended to be vague and indefinite from another standpoint, particularly when read in conjunction with that language in the preceding which requires the Commissioners, before issuing a permit for "the construction, alteration, reconstruction, or razing of any building", to refer "the plans" to the Commission of Fine Arts for a report. The language "to preserve and protect the places and areas of historic interest, exterior architectural features and examples of the type of architecture used in the National Capital in its initial years" would appear to be designed to prevent the destruction or alteration of the remaining early Georgetown structures or parts thereof. The use of the word "construction" later on in the first sentence of the second section creates a doubt, however, as to the intent of the Act, and, focusing on that aspect of the Act alone, the law would appear to require Mark in connection with "the construction * * * of any building within said Georgetown district", involving the use of plans, the Commissioners are required to refer such plans to the Commission of Fine Arts. The use of the phrase "the plans" creates a doubt as to the status, insofar as the application of the Old Georgetown Act is concerned, of work involving construction, alteration, reconstruction or razing for which no plans are required to be submitted; i.e., work so minor in nature as to make it unnecessary that plans be prepared. This situation raises the further question of whether it was the intent of the Congress that plans be prepared for all work to be performed within the area, regardless of how minor, to the end that the Commission of Fine Arts would be in a position to consider the report.

The second section of the Act contains other provisions susceptible of differing interpretations. The last part of the first sentence states that the Commissioners shall refer the plans for proposed building work to the Commission of Fine Arts

> "* * * for a report as to the exterior architectural features, height, proportion, color, and texture of the materials of exterior construction which is exposed to public view from a public highway."

On this aspect of the Act, the Commission of Fine Arts apparently is of the view that it is sufficient, when proposed work fails to meet with its approval, as has been the case to 3.5% of the applications filed, to secure the withdrawal of the Commissioners with the notation "Disapproved", perhaps with the briefest of reasons for such disapproval. During the period beginning April 12, 1955, and ending January 7, 1957, there were sixteen disapprovals out of the 329 applications submitted. The reasons given for disapproval were the following:

CASE 1407.	None given.
1427.	"Pending submission of new sketch."
1423 to 1436	"Alley facade unsatisfactory."
1439.	"Recommend wood frame."
1446.	"Recommend wood."
1569.	"See attached letter" [The reason set forth in the attached letter was that "They believe that the architectural features, height, appearance, color and texture of the materials, are at variance with the intent of the law, and with the standards of judgment imposed by its reference."]
1580.	"Design of street facade is unsatisfactory, especially as to size and spacing of windows."
1627.	(No information available)
1641.	"Recommend wood or brick."
1642.	"Recommend brick stoop and wrought iron rail."
1659.	"Wording inappropriate. Recommend deletion of all but identification of contractor and architect."
1675.	(No information available)

Of the foregoing actions by the Commission of Fine Arts, only half may be said to approach the requirement contained in the Act that the Commission report "its recommendations, including such changes, if any, as in the judgment of the Commission are necessary and desirable to preserve the historic value of the said Georgetown district." The other actions leave the property owner without information on which to proceed. "Alley facade unsatisfactory" and "Design of street facade unsatisfactory" provide no guide as to the kind of design which will be satisfactory to the Commission. In such cases, the property owner must re-submit, perhaps again to have his application disapproved. The Act, however, indicates (by implication, at least) that a property owner, in the case of disapproval, is to be furnished information as to the changes considered necessary and desirable by the Fine Arts Commission.

Still another portion of section 2 of the Act susceptible of differing interpretations is the proviso at the end, reading as follows:

> "Provided, That, if the said Commission of Fine Arts fails to submit a report on such plans within forty-five days, its approval thereof shall be implied and a permit may be issued."

The question raised by this portion of the Act relates to the course of action open to the Commissioners where the Commission of Fine Arts has acted, but has failed to submit the report required by the second sentence of section 2. When the Commission of Fine Arts has disapproved an application, without including with its recommendation "such changes, if any, as in the judgment of the Commission are necessary and desirable", it can be contended that the Commission has failed to act in the manner required by law, and if the forty-five day period has expired, that the Commissioners are precluded from returning the case to the Fine Arts Commission for completion of action. Should it be contended that the Commission of Fine Arts is not required to state what changes it considers necessary and desirable, leaving the property owner to try to guess what will meet with the approval of the Commission, such a contention might raise a constitutional question involving the taking or denial of right to use of property without due process of law. It must always be remembered, in this connection, that it is the Commissioners, and not the Fine Arts Commission, who are answerable to persons aggrieved by adverse administrative action.

Finally, the phrase "any permit" as it is used in section 2 of the Act may either mean the usual building permit issued by the District of Columbia or it may mean a special permit authorizing the performance of work within the Georgetown district. If this phrase be taken as meaning the ordinary building permit, such permits are not required, under section 201-03d of the Building Code, "for alterations in buildings which do not involve any change in their structural parts, or their stairway, elevator, fire escapes or other means of communication or egress." Accordingly, it is possible under the Building Code, for a property owner to make a change in the exterior appearance of his property, not involving any change in its structural parts, without being required to secure a building permit. It may be argued that such action runs counter to the Old Georgetown Act, and if this be so, then the phrase "any permit" in the second section of the Act must have reference to some type of permit other than a building permit.

The foregoing is intended to be illustrative of the differing views which might be advanced respecting the interpretation of the Old Georgetown Act. It is not intended to be comprehensive, since it is possible that still other interpretations may be made of the language of the act, depending on whether it is interpreted liberally or narrowly. The foregoing illustrations have been given to support the view of this office that there is a need for what might be termed a "standard interpretation" of the Act, acceptable to the District of Columbia Government, the Commission of Fine Arts, and the general public. Such an interpretation, in view of the differing interpretations which can be made of the Act, must of necessity be derived from the legislative history of the Act and the application of the principles of statutory construction.

With respect to the intent of the Congress in enacting H. R. 7670 (which later became the Old Georgetown Act), Senate report No. 2115 of the 81st Congress states:

> "The purpose of the bill is to preserve the early architecture of Georgetown. It requires that before a building permit can be issued to construct, reconstruct, or remodel the exterior of buildings facing on public streets in Georgetown, the District of Columbia Commissioners shall obtain a recommendation from the Fine Arts Commission.* * *."

House Report No. 2600 of the same Congress on the same bill states:

> "The purpose of this bill is to * * * authorize approval of building permits by the Fine Arts Commission.* * *.
>
> "The original character of Georgetown predominates architecturally especially in the residences and streets. the people of Georgetown are desirous of protecting the district by an authority which will direct the type of structure suitable to the area.
>
> "This bill would require the District of Columbia Commissioners to obtain a report from the Fine Arts Commission before issuing a permit for a building or exterior alteration of a structure.* * *."

In the course of debate on H. R. 7670 in the House of Representatives, Mr. McMillan, Chairman of the Committee on the District of Columbia, made substantially the same statement contained in the House report on the measure, supra. In the Senate, Senator Hunt, the sponsor of the companion bill, S. 2347, stated:

> "* * * the purpose of this bill is to preserve the early architecture of Georgetown. Under the bill the District Commissioners, upon recommendation of the Fine Arts Commission, would issue permits for the construction, reconstruction, or remodeling of the exterior of buildings which face on public streets in Georgetown."

It would seem, therefore, from the statements made during debate and set forth in the Senate and House reports, that there can be no doubt but that it was the intention of Congress, in enacting H. R. 7670, "to preserve the early architecture of Georgetown". The legislative history of the Act, however, sheds little light on the intent of the Congress in connection with its use of the phrase in the Act "to preserve the historic value of said Georgetown district" - - whether this phrase was another

expression of the phrase "to preserve the early architecture of Georgetown", or whether it was intended to mean that the Georgetown district, admittedly deteriorated at one time in the recent past, was in effect to be recreated and be made into an example of an early colonial commercial city. Some guidance is to be found in the sentence in House report No. 2468 which reads "The people of Georgetown are desirous of protecting the district by an authority which will direct the type of structure suitable to the area." (Emphasis supplied). But this sentence also is ambiguous. Virtually any structure suitable for the industrial, second commercial, first commercial, or residential zone elsewhere in the city can be said to be "suitable" for some part of the Georgetown district as it existed in 1950, and as it exists today. If it were the intent of the Congress that the Georgetown district was to be recreated and be made into an example of an early colonial city, such an intent might have been expressed by a more suitable word than the word "suitable". In the absence of any clear indication of the intent of the Congress on this aspect of the problem, it is necessary to have recourse to the principles of statutory construction.

The Old Georgetown Act, insofar as it does, certain restrictions on the free use of property by the owner thereof, must be considered in the light of the common law relating to the use to be made of property, and particularly real property. Generally speaking, the owner of property has the right to use it as he desires, limited only by proper exercise of the police power. Lee v. Chicago, 51 F. 2d 367. With respect to the control which may be exercised by the state over the free use of property,

> "* * * the power rests in the state so to regulate and control the use of property as to secure the general safety, the public welfare, and the peace, good order, and morals of the community. And in the proper exercise of it property rights are subject to such regulation as the legislature may in its wisdom see fit to impose, consistent with the Constitution. This does not confer power to control rights which are purely and exclusively private, but it does authorize the establishment of laws requiring each citizen so to conduct himself and use his own property as not unnecessarily to injure another. This is the very essence of government. This power of government - - commonly called the police power - - is essential, and, as well, very great and comprehensive in its extent." * * *
>
> "The state may provide regulations as to the acquisition, enjoyment, and disposition of property. The power extends to intangible, as well as to tangible, property. However, since the right of property is a fundamental right, its protection, as well as its use, is one of the most important objects of government, a limitation imposed under this power without

reason or necessity cannot be enforced, and in the exercise of it, the state cannot prohibit altogether any person whatever from legally acquiring and possessing property generally, or any particular species or description of property. Nor can an owner be deprived, even by statute, of the legitimate use of his property because it may cause a real damage to his neighbor. The state can, however, within constitutional limitations, not only regulate the acquisition, enjoyment, and disposition of property, but as all property is held subject to the lawful demand of the sovereign, it may also take private property for a public purpose, subject, of course, to the right of the individuals to just compensation therefor." (American Jurisprudence, Vol. 42, Property '49. Emphasis supplied)

The power of the state with respect to its control over the use of private property has in recent years been subjected to scrutiny by the United States Supreme Court in the case of Berman v. Parker, 348 U. S. 26, decided November 22, 1954. In the Berman case, the Supreme Court said:

"The power of Congress over the District of Columbia includes all the legislative powers which a state may exercise over its affairs. We deal, in other words, with what traditionally has been known as the police power. An attempt to define its reach or trace its outer limits is fruitless, for each case must turn on its own facts. The definition is essentially the product of legislative determinations addressed to the purposes of government, purposes neither abstractly nor historically capable of complete definition. Subject to specific constitutional limitations, when the legislature has spoken, the public interest has been declared in terms well-nigh conclusive. In such cases the legislature, not the judiciary, is the main guardian of the public needs to be served by social legislation* * *.

* * * * * * * * *

"* * *. The concept of the public welfare is broad and inclusive. The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled. In the present case, the Congress and its authorized agencies have made determinations that take into account a wide variety of values. It is not

for us to reappraise them. If those who govern the District of Columbia decide that the Nation's Capital should be beautiful as well as sanitary, there is nothing in the Fifth Amendment that stands in the way."

In addition to the requirement that a law affecting the use of property be consistent with the Constitution, such a law must meet an additional test. This is a determination as to whether the law is in derogation of the common law, and, if such should be the case, the law then becomes subject to that principle of statutory interpretation requiring it to be given strict interpretation. This principle is set forth in section 6201 of Sutherland's "Statutes and Statutory Construction", 3rd Edition, which reads as follows:

"Where it is claimed that a statute imposes a duty or burden, or establishes a right or benefit which was not recognized by the common law, the statute will be given a strict interpretation to avoid the change asserted. This rule of statutory interpretation has received wide adoption, and is employed where there is reasonable doubt whether the change in the common law alleged to have been created by the statute was intended to apply to a particular situation or circumstance. If a change in the common law is to be effectuated, the legislative intent to do so must be clearly and plainly expressed. A statute may take away a common law right, but there is always a presumption that the Legislature has no such intention.

"The rule of strict interpretation of statutes in derogation of the common law has been recognized as a useful method in avoiding the possibility of a doubtful statutory duty. By admitting of only those changes of the accepted common law which are clearly expressed in the language of the statute the policy of sustaining the dignity of the principles of justice upon which the common law is founded is maintained. * * *." (Emphasis supplied)

Much of the preceding portion of this opinion has taken the form of what Sutherland, in section 4703 of his Statutory Construction, calls "textual or real dissection". The purpose of such "dissection" has been to demonstrate that by the placing of emphasis on the particular word, phrase, clause, or sentence, or on a selected combination of any of them, the Old Georgetown Act can be made to mean whatever the interpreter desires it to mean. But the central statutory construction principle applicable to this aspect of the problem is set forth by Sutherland in the following two sections of his Statutory Construction:

"§4703. 'Whole statute' interpretation.

"The practical inquiry in litigation is usually to determine what a particular provision, clause, or word means. To answer it one must proceed as he would with any other composition--construe it with reference to the leading idea or purpose of the whole instrument. A statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent. Consequently, each part or section should be construed in connection with every other part or section so as to produce a harmonious whole. Thus it is not proper to confine interpretation to the one section to be construed.

"It is always an unsafe way of construing a statute or contract to divide it by a process of etymological dissection, and to separate words and then apply to each, thus separated from its context, some particular definition given by lexicographers and then reconstruct the instrument upon the basis of these definitions. An instrument must always be construed as a whole, and the particular meaning to be attached to any word or phrase is usually to be ascribed from the context, the nature of the subject matter treated of, and the purpose or intention of the parties who executed the contract or of the body which enacted or framed the statute or constitution."

"§170. Intention of the whole controls interpretation of the parts.

"The presumption is that the lawmaker has a definite purpose in every enactment and has adapted and formulated the subsidiary provisions in harmony with that purpose; that these are needful to accomplish its and that, if that is the intended effect, they will, at least, suffice to effectuate it. That purpose is an implied limitation on the sense of general terms, and a touchstone for the expansion of narrower terms. This intention affords the key to the sense and scope of minor provisions. From this proposition proceeds the general rule that the cardinal purpose or intent of the whole act shall control, and that all the parts be interpreted as subsidiary and harmonious. A statute is to be construed with reference to its manifest object, and if the language is susceptible of two constructions, one which will carry out and the other defeat such manifest object, it should receive the former construction." Thus Chancellor Kent observed: "In the exposition of a statute the intention of the lawmaker will prevail over the literal sense of the terms; and its reason and intention will prevail over the strict letter. When the words are not explicit, the intention is to be collected from the context; from the occasion and necessity of the law; from the mischief felt and the remedy in view; and the intention should be taken or presumed according to what is consistent with reason and good discretion."

"If upon examination the general meaning and object of the statute is inconsistent with the literal import of any clause or section, such clause or section must, if possible, be construed according to that purpose. But to warrant the change of the sense to accommodate it to a broader or narrower import, the intention of the legislature must be clear and manifest."

Also to be taken into consideration in construing the Act is that principle of statutory construction which requires that effect be given every word of the statute. This principle is set forth in section 4705 of Sutherland, reading as follows:

"§ 4705. Effect given every word.

"'It is an elementary rule of construction that effect must be given, if possible, to every word, clause and sentence of a statute.' A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant, and so that one section will not destroy another unless the provision is the result of obvious mistake or error."

Finally, although effect is to be given every word of a statute in construing it, the literal interpretation of the words of an act should not prevail if it creates a result contrary to the apparent intention of the legislature and if the words are sufficiently flexible to admit of a construction which will effectuate the legislative intention. Sutherland, Statutory Construction, 4706. This section of Sutherland continues as follows:

"* * *. The intention prevails over the letter, and the letter must, if possible, be read so as to conform to the spirit of the act. 'While the intention of the legislature must be ascertained from the words used to express it, the manifest reason and obvious purpose of the law should not be sacrificed to a literal interpretation of such words.' Thus words or clauses may be enlarged or restricted to harmonize with other provisions of an act. The particular inquiry is not what is the abstract force of the words or what they may comprehend, but in what sense were they intended to be used in the act. The sense in which they were used by the legislature furnishes the rules of interpretation and when this cannot be determined from the context of the act, the court may resort to extrinsic aids. Obviously, if the words of the act indicate the legislative intent other sources may not be resorted to to establish a meaning contrary to that intention. Thus if the statute specifically declares its intention and meaning all other provisions of the act are controlled by it and the policy section will be given primary importance in interpreting the remainder of the law."

Proceeding, therefore, to an examination of the Old Georgetown Act in the light of the principles of law hereinbefore set forth, the first

aspect of the law to be considered is that of its constitutionality. With respect to this, the following sections of Sutherland on Statutory Construction are quoted in full:

"§4509. Legislative intent -- Constitutionality.

It is constantly asserted by the courts that every presumption favors the validity of an act of the legislature and that all doubts must be resolved in support of the act. Likewise, it will be presumed that the legislature acted with integrity and with an honest purpose to keep within constitutional limits. This presumption is valid for legislatures are coordinate branches of government and are equally pledged to support the constitution. Nevertheless this presumption though frequently reiterated has little operative effect in the determination of a particular case. The presumption is asserted as frequently when the statute is declared unconstitutional as it is when constitutional attack is denied. The 'presumption' is obviously not conclusive and has, apparently, little effect on the actual decision of cases.

"§4510. -- Effective regulation.

A statute is a solemn enactment of the state acting through the legislature and it must be assumed that this process achieves an effective and operative result. It cannot be presumed that the legislature would do a futile thing. Thus, legislative language will be interpreted on the assumption that the legislature was aware of existing statutes, the rules of statutory construction, and the judicial decisions and that if a change occurs in legislative language a change was intended in legislative result.

"These assumptions are sound. Unfortunately, many rules of interpretation deny their validity. Thus, it is not presumed that the common law is changed by statutory enactment; statutes in derogation of the common law will be strictly construed, the rule of void for uncertainty; and many others may in fact create a presumption against the effectiveness of the statute. Fortunately, these rules are being used with less frequency today, and courts are endeavoring with increasing wisdom to give full effect to the creative element of legislation in our society."

Applying the foregoing, I think that there can be no doubt concerning the constitutionality of the Old Georgetown Act, if it be reasonably construed, reasonably applied, and reasonably administered. A reasonable construction of the Act is one which tends to promote the health, welfare, safety and morals of the Georgetown district, with particular reference to welfare, but one which strikes a nice balance between the principle laid down by the Supreme Court in the Berman v. Parker case, and the principle that statutes in derogation of the common law are to be given a strict interpretation. Such a construction, in addition to striking

such a balance, what also be the result of the application of the other principles of statutory construction heretofore discussed at some length--interpretation of the whole statute, avoidance of "etymological dissection", effect given to every word, and the limitation of literal interpretation, to mention the main principles to be taken into consideration.

For ease of reference in connection with construing the Old Georgetown Act along the lines set forth above, section 2 of such Act is repeated:

> "SEC. 2. In order to protect the general welfare and to preserve and protect the places and areas of historic interest, exterior architectural features and examples of the type of architecture used in the National Capital in its initial years, the Commissioners of the District of Columbia, before issuing any permit for the construction, alteration, reconstruction, or razing of any building within said Georgetown District described in section 1 shall refer the plans to the National Commission of Fine Arts for a report as to the exterior architectural features, height, appearance, color, and texture of the proposals of exterior construction which is subject to public view from a public highway. The National Commission of Fine Arts shall report promptly to said Commissioners of the District of Columbia its recommendations, including such changes, if any, as in the judgment of the Commission are necessary and desirable to preserve the historic value of said Georgetown district. The said Commissioners shall take such actions as in their judgment are right and proper in the circumstances: Provided, That, if the said Commissioners of fine Arts fails to submit a report on such plans within forty-five days, its approval thereof shall be assumed and a permit may be issued."

Taking the foregoing section as a whole, and bearing in mind that although the Old Georgetown Act is in derogation of the common law, the principle relative to strictly v. largely novel, might be held to justify a more liberal construction than would usually be the case under such circumstances, I am of the opinion that the Old Georgetown Act was designed and intended to serve as a preservative and conservation measure, to prevent the further destruction of an historically significant section of the National Capital, but that it was not intended and designed to serve as a reconstruction measure. I base this action on the use of the two words "preserve" and "protect", which have the following pertinent meanings, according to Webster's New International Dictionary:

> Preserve - To keep or save from injury or
> destruction; to keep in existence
> [illegible]

Protect - To cover or shield from that which would injure, destroy, or detrimentally affect; to secure or protect against attack, encroachment, harm, disintegration, etc.

The word "preserve" is quite limited in its operation, and would not appear to be susceptible of being interpreted in such manner as to support a contention that the Act authorizes the reconstruction of Georgetown along the lines of an early colonial commercial city. The word "protect", however, if construed extremely liberally, might be said to justify a certain degree of reconstruction, if such reconstruction be reasonably necessary to avoid harm to, or to preserve, a place or area of historic interest, or an example of a type of architecture or exterior architectural feature used in the National Capital in its initial years. Reasonableness is, of course, a matter of degree, but I am of the opinion that there must be some reasonable connection between the feature to be protected, and the action required to be taken. Thus, it would not seem reasonable that a building in the industrial or commercial zones in the southern part of the Old Georgetown district be constructed, altered, or converted along certain lines in order to "protect" recently-constructed residential property in the northern part of the district. By no stretch of the imagination would it appear to have been the intent of the Congress that the Old Georgetown Act was designed to "preserve and protect" the present-day buildings in Georgetown that have been built since September 1950. The buildings in existence on the date of the enactment of the Old Georgetown Act might be said to have some claim to the protection afforded by the Act, but the Act would have to be construed most liberally to extend such protection to the buildings constructed within the past six years. And even such protection as may be afforded the older buildings of the district would not appear to justify depriving a property owner of the free use of his property, subject only to the constitutional exercise of the police power, to "protect" such older buildings. In this area of the problem here being considered, I am of the opinion that the Old Georgetown Act must be construed in such manner as to allow reasonably free use of property, subject to the constitutional exercise of the police power, regardless of the fact that such use may not "protect" a place or area of historic interest, an exterior architectural feature, or an example of early architecture, within the meaning of the word "protect" in its most literal sense. In line with the principle set forth earlier in this opinion, holding that statutes in derogation of the common law are to be construed strictly, I am of the opinion that the proposed use of property by an owner can be limited or directed along different lines under the authority of the Old Georgetown Act only if such proposed use, unless limited or changed, can reasonably be expected naturally to harm, injure, destroy, or affect detrimentally a place or area of historic interest, or an example of a type of architecture or exterior architectural feature used in the

National Capital in its initial years. I am further of the view that theoretical or remote harm, injury, destruction, or detrimental effect is insufficient cause to deprive a property owner of the free use of his property, even under the most liberal construction of the Act, and, as noted above, such a construction is not applicable under the circumstances of this matter.

Continuing with the construction to be given the second section of the Old Georgetown Act, I am of the opinion that in connection with preserving and protecting the district the Act, with its requirement that the Commission of Fine Arts make a report to the Commissioners, by implication requires the Commission to make a study or analysis of the effect of the work proposed to be done preliminary to making its report. Further, bearing in mind that one of the standards established by the Act is the preservation of "the historic value of said Georgetown district", such study or analysis should not only cover an individual building or part thereof, but should extend to the area in which such building is located, if there is truly to be a preservation of the historic value of the district. Such a study or analysis should cover such matters as exterior architectural features or types of architecture which should be preserved as examples of early usage, and the height, appearance, color, and texture of the materials of exterior construction used in the building under consideration. This requirement of a report, and the implied requirement of a study or analysis of the situation, must, however, be read in conjunction with the first sentence of the section. So read, the report so required would appear to be designed to provide information as to whether any historically valuable or significant building or part thereof is in danger of destruction or of being detrimentally affected, rather than whether any proposed new, altered, or converted building will be a replica of or similar to an early Georgetown building, or whether any new or changed features of a building are replicas of or similar to features used in early Georgetown buildings. I am of the view that the primary purpose of the Act is the preservation and protection of historically significant buildings and building features remaining in existence as of September, 1950.

With respect to the problem of whether the Old Georgetown Act is applicable to the erection of signs and the construction of fences and swimming pools, I am of the view that it applies to neither. Again applying the principle that statutes in derogation of the common law are to be construed strictly, but with some admixture of liberality along the lines set forth in Berman v. Parker, supra, I conclude that the word "building" as used in the Act cannot be construed to mean a sign, a fence, or a swimming pool, since the word means:

> "Ordinarily, a structure or edifice inclosing a space within its walls, and usually, but not necessarily, covered with a roof." (Black's Law Dictionary, 3rd Edition)

Webster's New International Dictionary ascribes the following meaning to the word:

> "Building: As now generally used, a fabric or edifice, framed or constructed, designed to stand more or less permanently, and covering a space of land, for use as a dwelling, storehouse, factory, shelter for beasts, or some other useful purpose. Building in this sense does not include a mere wall, fence, monument, hoarding, or similar structure, though designed for permanent use where it stands;* * *."

It must also be remembered, with respect to the question of whether the Old Georgetown Act is applicable to signs, that the Congress, at the time it considered the Old Georgetown legislation, was aware of the existence of the earlier Act of Congress, approved March 3, 1931 (46 Stat. 1486; Secs. 1-231 to 1-235, D. C. Code, 1951), relating to signs. Nothing in the Old Georgetown Act either expressly or impliedly amends or repeals the 1931 Sign Act, and I am of the opinion that this 1931 special legislation governing signs is unaffected by the 1950 general legislation establishing certain controls over the Georgetown district, notwithstanding the fact that the Old Georgetown Act has been administratively interpreted to apply to signs, and a provision to this effect has been inserted in section 3 of the Sign Regulations, as reprinted, although such provision was not formally adopted by the Commissioners.

It may well be contended that it was the intention of the Congress to make the Old Georgetown Act applicable to signs, fences, and swimming pools, and that Congress inadvertently omitted spelling this out. Still another principle of statutory construction, however, is that which inhibits the supplying of allegedly omitted words. To quote part of section 4928 of Sutherland's Statutory Construction:

> "Words may not be supplied in a statute where the statute is intelligible, without the addition of the alleged omission,* * *."

Accordingly, to construe the Old Georgetown Act in such manner as to make it applicable to signs, fences, and swimming pools in effect would be to supply words which the Act does not contain, and the addition of which would broaden the scope of the Act, but make it no more intelligible. Even ordinarily, the supplying of allegedly omitted words is not justified where a statute is intelligible without such words. In the present case, involving the construction of a statute in derogation of the common law, requiring a fairly narrow interpretation, there would seem to be even less justification for attempting to supply allegedly omitted words so as to broaden the scope of the Act.

I believe that the foregoing analysis of the relative positions of the Old Georgetown Act and the Sign Act is valid, because, in the absence of any express provision in the Old Georgetown Act, if it be assumed that the Old Georgetown Act supersedes the Sign Act, then it can, with equal assurance, be assumed that the Old Georgetown Act supersedes

the Zoning Act, and possibly other Acts of Congress. I am certain that such was not the intent of the Congress. It is more reasonable to assume that the Old Georgetown Act was intended to supplement, rather than supersede, existing law, and to provide a means whereby historical features and areas of the Georgetown District could be protected from destruction--a means which, until the enactment of the Old Georgetown Act, was not available.

It is of interest to note that there has been no serious contention that the Old Georgetown Act supersedes the Zoning Act and the regulations adopted under the authority of such Act. The Zoning Commission and the Board of Zoning Adjustment continue to act, with respect to matters in the Old Georgetown district, in the same manner that like matters are handled elsewhere in the District of Columbia. Mr. Harold M. Lewis, planning consultant who on November 9, 1956, transmitted to the Commissioners his recommendations for a comprehensive rezoning of the District of Columbia, included in such recommendations proposals for the rezoning of the Old Georgetown district, thereby indicating the continued applicability of the Zoning Act to that area of the District of Columbia. It would appear, therefore, that it is generally understood that there is no supersession of the Zoning Act by the Old Georgetown Act, with respect to property located in the Old Georgetown district.

Another aspect of the problem or problems created by the Old Georgetown Act is the extent to which such Act is applicable to the exterior decoration of buildings within the district--(1) those in existence at the time of the approval of the Act, and (2) those constructed since the approval of the Act. In this connection, I am of the view that with respect to those buildings in existence at the time of the approval of the Act, the purpose of the Act is to prevent the destruction or damaging of such exterior parts of such buildings as may be said to constitute an historical feature, but consistent with full recognition of the right of the private property owner to use his property as he sees fit, just so such use is not one proscribed by the proper exercise of the police power of the municipality. Unless, therefore, the color of paint used on the exterior of a building can be said to constitute an historical feature which is entitled to preservation and protection, I see no justification for considering the Old Georgetown Act as being applicable in matters relating to the color or kind of paint used on a building. In one case, a question was raised with respect to the applicability of the act in connection with the use of decorative tiles on the exterior of a residence. Unless such use constituted a destruction or damaging of an historical feature, there would appear to be no objection to such use. In another case, a question was raised concerning the installation of a picture window in a residence. While this proposed action was affected by still another problem, it is to be questioned whether, in the absence of the destruction or damaging of an historical feature, the Old Georgetown Act can be said to be applicable to the kind

and size of windows installed in a residence. In this connection, I might point out that the Housing Code requires a certain amount of window area in habitable rooms. It is conceivable that if the Old Georgetown Act be considered as being applicable to the kind and size of windows in a residence, and the window area thereby be limited, the property owner would either be denied the use of a room served by such window area, or use it illegally. In such cases, which police power of the municipality is to prevail—the power to promote the public health, by requiring larger window area, or the power to require the observation of the aesthetic demands of the Commission of Fine Arts? I am of the view that the improvement of the public health takes precedence over the observation of aesthetic requirements, and that, in fact, aesthetic requirements must give way to the owner's right to use his property, whenever such aesthetic requirements impose restrictions on such use which may be considered a deprivation of property.

With respect to buildings constructed since September 22, 1950, I have considerable doubt as to the applicability of the Old Georgetown Act. Voluntary compliance with any requirements of the Commission of Fine Arts, in the interest of restoring early Georgetown, is one thing. Denial of the use of a person's property, for the reason that such proposed use constitutes a possible danger to the character of the community, is quite another. Now, if the owner of a vacant lot or parcel of ground which he has received by inheritance, having a dislike for the early Georgetown style of architecture, desires to construct thereon what might be termed an "ultra-modern" residence, should he not be entitled to do so? To require him to construct on his property a building of a style which he dislikes, and which may not suit his needs, because the character of the neighborhood is predominantly early Georgetown in style, in effect is giving the other property owners in the area a property right in the property of the person desiring to build the modern residence, and giving them a voice in the use to be made of his property, for which they have given no consideration. It may be true that the purpose of the Old Georgetown Act is to preserve and protect an area of historical interest, or architecture or architectural features of the kind used in the early days of Georgetown, and the construction of a building in "ultra-modern" style may not be in accord with this purpose of the Act. Nevertheless, a property owner prevented from making an otherwise normal use of his property is being deprived of a property right. The Old Georgetown Act makes no provision for the payment of compensation to persons denied the free use of their property, and this aspect of the Act might well give rise to a constitutional question, since it has the effect of depriving a property owner of the free use of his property, and requiring him to bear the burdens of the Act at his own expense, without compensation therefor.

Still another aspect of the problem of the Old Georgetown Act is the present arrangement whereby the action required under the law to be taken by the Commission of Fine Arts is actually taken by the committee

of three architects authorized to be appointed by the Commission, under section 3 of the Act, to "advise the Commission of Fine Arts, in writing, regarding designs and plans referred to it." Under the Act, it is the function of the Commission of Fine Arts to report to the Commissioners on proposed work. The Act contains no provision for the delegation of this function to the three-member committee on architects. It is incumbent on the Commission of Fine Arts, therefore, under the law, itself to act on each application, rather than through an agency (the committee of three architects) to which it has no authority to delegate the function required to be performed by it. It is conceivable that the Commission of Fine Arts and the committee of three architects may take opposite positions on an application. In such a case, an application not meeting with the approval of the three architects might well have been approved by the Commission of Fine Arts had the Commission itself considered the matter, and, if this should occur, the applicant would be denied the Commission's approval under the existing arrangement. Reversing the situation, the three architects might approve an application which would not meet with the approval of the Commission of Fine Arts. In this event, the question could arise as to whether the Commission of Fine Arts was preserving and protecting the Old Georgetown district in the manner intended by the Congress. Compliance with the requirements of the Act, with the Commission of Fine Arts itself acting on an application, after receiving the advice of the committee of architects, might avoid the complications which would arise from the present arrangement whereby the Commission of Fine Arts allows a committee of architects to perform the function that the Commission is required by law to perform.

Finally, with respect to the authority of the Commission of Fine Arts over buildings in the Old Georgetown district condemned as unsafe or insanitary, this aspect of the problem was considered in an opinion of this office approved by the Commissioners on October 25, 1955 (CCO: 442-1 - Georgetown University, 3601-3621 O Street, N.W.). In that opinion, this office stated:

> "It is quite clear that the Old Georgetown Act differentiates between the voluntary and the compulsory alteration, repair, or razing of buildings. With respect to the former, Section 2 requires that the Commissioners submit applications for permits to the Commission of Fine Arts, whereas Section 7 specifically removes from this requirement applications for permits submitted pursuant to condemnation orders.
>
> "The answer to the Deputy Director's Questions Nos. 1 and 2, is as follows:
>
> "1 and 2. It is not necessary to submit to the Commission of Fine Arts applications for the repair, alteration or demolition of buildings in the Georgetown area which have been condemned as insanitary or unsafe."

Because it is essentially an architectural matter, one problem created by the Old Georgetown Act has not been discussed in the foregoing statutory construction of the Act. This is the problem involved in the meaning of the phrase "type of architecture used in the National Capital in its initial years", seemingly indicating that in the initial years of the National Capital only one type of architecture was in use. Should this be the case, it would seem desirable that there be made and published, for the guidance of the public, some finding as to the type of architecture used in the National Capital in its initial years. Material available in the Architectural Division of the Central Library indicates, however, that more than one type of architecture may have been in use in the National Capital in its initial years; to wit, Pre-Revolutionary, Georgian, Federal, and perhaps others, depending on the length of time covered by the phrase "initial years". It would seem necessary, therefore, in order to provide guidance for all persons in this problem, that appropriate action be taken to determine the type or types of architecture in use in the District of Columbia, beginning with the year 1791 when the District boundaries were established, and proceeding for such number of years as may reasonably be said to constitute the "initial years of the National Capital". Inasmuch as by section 1 of the Revised Statutes of the United States, relating to the interpretation of law of Congress, "words importing the singular number may extend and be applied to several persons or things", should it be determined that more than one type of architecture was in use during such period, I find nothing in the Act which would authorize the limitation of action thereunder to one favored type of architecture, since the phrase "type of architecture" may be construed to mean "types of architecture".

conclusion":

1. That the Act approved October 25, 1950, known as the "Old Georgetown Act", is a statute in derogation of the common law, and as such should be construed fairly strictly, rather than liberally.

2. That the Old Georgetown Act was designed and intended by the Congress to serve as a preservation and protection measure, to prevent the further destruction of an historically significant section of the National Capital, but that it was not intended and designed to serve as a reconstruction measure.

3. That the Old Georgetown Act must be applied in such manner as to allow reasonably free use of property, subject to the constitutional exercise of the police power of the municipality.

4. That the proposed use of property by an owner can be limited or directed along different lines under the authority of the Old Georgetown Act only if such proposed use, unless limited or changed, can reasonably be expected materially to harm, injure, destroy, or affect detrimentally a place or area of historic interest, or an example of a type of architecture or an exterior architectural feature used in the National Capital in its initial years.

5. That the authority of the Old Georgetown Act cannot be used to deprive a property owner of the free use of his property on the ground that a proposed use is likely to cause theoretical or remote destruction, harm, injury to, or destruction of, some area of historic interest, exterior architectural feature, or example of early architecture.

6. That the Old Georgetown Act requires a study by the Commission of Fine Arts, before changes are made to a building, to provide information as to whether any historically valuable or significant building or part thereof is in danger of destruction or of being detrimentally affected.

7. That the action required by the Old Georgetown Act to be taken by the Commission of Fine Arts must be taken by the Commission itself, since there is no authority in the Act for the Commission to delegate its function to the three-member committee of architects appointed to "advise the Commission of Fine Arts, in writing, regarding designs and plans referred to it."

8. That the Old Georgetown Act is applicable to buildings, in the usual sense of that word, and is not applicable to signs, fences, walls, swimming pools, and other structures coming within the definition of the word "building".

9. That the Old Georgetown Act can be said to be applicable in cases of exterior decoration involving the color or kind of paint, decorative tiles, and kind and size of windows only where the use of such materials or the design and size of windows will destroy or affect detrimentally an historic feature, architectural or otherwise.

10. That in connection with the disapproval of an application for work subject to the Old Georgetown Act, the Commission of Fine Arts is required to act in the manner and within the time prescribed by law, and unless the prescribed action be taken within the time specified, the Commissioners of the District of Columbia are required to assume that the Commission of Fine Arts has approved the application, and may, in their discretion, issue the permit for which application has been made.

11. That while the Old Georgetown Act contains an implication that the Congress intended the Act to be applicable to work in addition to that for which a building permit is required by the Building Code, neither the Commission of Fine Arts nor the Director of Licenses and Inspections has recommended the amendment of the Building Code in such manner as to specify the kind of work for which a special permit will be required, and this administrative interpretation of the Act might be said to indicate that neither the Commission of Fine Arts nor the Director of Licenses and Inspections is of the view that work other than that for which a permit is now required by the Building Code is to be subject to the provisions of the Old Georgetown Act.

12. That the interpretation and administration of the Old Georgetown Act in such manner as to deprive a property owner of the free use of his property might be unconstitutional, inasmuch as no provision is made in the Act for the payment of compensation to persons required to limit the use of their property to certain purposes; i.e., the preservation and protection of the historic value of the Old Georgetown district.

RECOMMENDATIONS:

1. That the Commissioners, prior to acting formally on this opinion, forward it to the Director of Licenses and Inspections for his comments and recommendations.

2. That the Commissioners, after receiving the comments and recommendations of the Director of Licenses and Inspections, determine as a matter of policy whether they desire to forward this opinion to the Commission of Fine Arts for consent and discussion with the Commissioners before taking a definite position with respect to the future disposition of questions arising under the Old Georgetown Act.

CHESTER H. GRAY
Corporation Counsel, D. C.

3-30-57
HFF:jgl

RECEIVED
THE COMMISSION OF FINE ARTS
WASHINGTON, D. C.

APR 10 1959

NOTED

APPENDIX 1

NO	ADDRESS AND OWNER	PROJECT	ACTION
2111 R 2037	501-505 4th St., NW 1st Trinity Lutheran Church	New church bldg.	Disap'd. without prejudice of resubmission of design in closer harmony & scale with governmental bldgs. in area, 9/15/58
2115	4155 Linnean Ave., NW Mrs. Merriweather Post May	Addn. to garage (Hillwood)	App'd., 9/26/58
2116 R 2099	905 Pa. Ave., NW Mark Weiss Camera Center	1 s-f, 25 sq-ft sign, metal ltrs., back-lighted with white neon tubing	
2117	933 Pa. Ave., NW Rafael Brenner (Brenner Photo)	Remodel store front; 16' wide showwindow to extend 3' beyond bldg. line	App'd., 10/9/58
2119	452 Md. Ave., SW Redevelopmend Land Agency	Parking lot attendants shelter & office. (Jos. Homes Parking lot)	App'd., 10/9/58

Exhibit C

REPORT OF ACTIONS TAKEN ON SHIPSTEAD-LUCE ACT APPLICATIONS SINCE 11 SEPTEMBER 1958

ACTION	SPEAKER	SPEAKER AND OWNER
Hearing, volume previous of treatment-rate to owner increase + basis with governmental bodies. In accordance 1/2/3 —		
Approved 10/9/19	Item volume 1 July.	2nd Ave., 94 — Ind. Park Industrial Tract

NO	ADDRESS AND OWNER	PROJECT	ACTION
2237	1025 Cecil Pl. H. H. Gay	Rev. to bldg. permit; chg. in window size	App'd., 9/16/58
2247	1632 Wisc. Ave. F. A. Kuhn (store)	Rev. to bldg. permit B-37719 to put in French doors	Inasmuch as design agreed on in conference & app'd. in OG 2212, is not being followed, appl. is ret'd. without further action. Fragmentary sketch appended does not accurately represent present appearance of exist. door on st. facade, 9/18/58
2265	1037 Cecil Pl., NW Hildegard Urdahl	Change openings in front elevation	App'd. provided window frames & muntins are wood, 9/12/58
2267	3024 Dumbarton Ave. W. G. Peter, Jr.	New 3-story brick dwelling; raze garage; erect 7' brick fence	App'd., 9/16/58
2268	1693-34th St., Lawrence Higgins	Install new chimney & stairway to basement; Install 2 area windows & enlarge 1 area window: erect partitions.	App'd., work not visible from a public highway, 9/12/58
2270	3421 M St. Pearl E. Seal	Erect 5-story & basement apt. bldg; concrete, brick & cinder-block	Recom'd., provided metal extension of incinerator stack be eliminated, 10/9/58
2271	1556 Wisc. Ave. Georgetown L. Church	Add wing to exist. Church; Raze dwelling, erect tempo. sheds; erect 20 sq-ft tempo. bldg. sign; razing	App'd., 9/16/58
2277	1526-32nd St. E. & E. O'Connell	Ornamental iron work on front entr. & single window on 1st fl.-a window box	App'd., 9/16/58
2278	3010 "O" St. Mrs. V. P. Thayer	10'-6" maximum brick & iron fence; w. i. arch over driveway to garage	App'd., 9/16/58
2279	1683-35th St. E. R. Hulbert	Remove exist. porch-replace with brick steps & platform; 3'-6" wide entr. steps to extend 4.175' beyond bldg. line.	App'd., 9/16/58
2280	1642-30th St. J. M. Spence	Add'l. plumbing; modifications in heating, constr. chimney; general rehabilitation & decoration.	App'd., 9/16/58

Exhibit D

REPORT OF ACTIONS TAKEN ON OLD GEORGETOWN ACT APPLICATIONS SINCE 11 SEPTEMBER 1958

H. H. Cay

to put in French door store (stores) N. A. Mann

Turner Hotel. Breakfast served on to complete & apply. To
Of 2252 is not being followed, appl. is true. Whether
Turner Hotel. Breakfast served on to complete & apply. To
accepted temporary employment of each. Does
on file. Passed. 9/12/18

Adv'd. Protect window trusses &
Building for work. 9/12/18

Adv'd. Work not started from a variety
Building. 9/12/18

Adv'd. Grease openings in front elevation
Building. 9/12/18

Adv'd. Put in French doors
Building. 9/12/18

Adv'd. Put in French doors
Building. 9/12/18

Adv'd. Put in French doors

NO	ADDRESS AND OWNER	PROJECT	ACTION
2281	1611 Wisc. Ave. Randolph W. Reed.	2nd fl. front awning (awning in place)	No objection is registered provided evidence is on file, indicating awnings were erected prior to PL 808, 81st Cong. It is our opinion, however, that these awnings detract from the appearance of the bldg., 9/18/58
2282	2725-33 "O" St. Ebenezer A.M.E. Church	Renovate church	Not recom'd; the exist. bldg. is an interesting example of its period & is worthy of preservation in its present form. (Note: We would be glad to consult with the owner regarding renovation), 9/24/58
2283	3015 Dumbart. Ave. A. & E.K. Thompson	Install wooden (antique) door of front recreation rm. (in place)	Door submitted in photo. appears to be an interior door. Design originally submitted with OG 2222 is considered more appropriate in relation to facade of house. If at all practicable, it is suggested that such a design be used, 9/18/58
2284	3146 M St. G. Y. Worthington	Renovate bldg; repair rear of bldg. & install fire escape	Recom'd. Suggest transom over door, & windows be divided into 3 lights with vertical muntins, 9/26/58
2285	1417-37th St. Georgetown U.	Replace exist. steps with brick steps	Recom'd., 9/24/58
2286	1415-37th St. Georgetown U.	Replace exist. steps with brick	Recom'd., 9/24/58
2287	1413-37th St.	Same as OG 2285	
2288	1411-37th St.	Same as OG 2285	
2289	1403-37th St.	Same as OG 2285	
2290	1619-33rd St. Lester A. Collins	Install new 2'-7" x 5' wood double-hung window, 6 lights top & bottom on side of bldg.	Recom'd., 9/24/58
2291	Rear 3124 Q St. or 1515-32nd St.	Convert present dwelling & garage to dwelling	Recom'd., provided steel casements be changed to wood double-hung windows, or wood casements with divided lights of same proportion as exist. windows, 9/24/58
2292	3010 Q St. S. & G. Levy	Replace exist. front windows with new windows; change front door.	Recom'd., 9/24/58

Multiple choice: circle your answer.

Replace exta* with Alpha Myth

Some as 00 SSS2

Some as 00 SSS2

Some as 00 SSS2

Replace exta* with Alpha Myth patch

Replace exta* with Alpha Myth patch area

Replace exta* with Alpha Myth patch area

Some as 00 SSS2

Some as 00 SSS2

Some as 00 SSS2

NO	ADDRESS AND OWNER	PROJECT	ACTION
2293	3128 N St. Layton & Trimble	Alterations; 6'-wide entr. steps to ext. 5' beyond bldg. line	Recom'd., provided windows on front elevation be 4'-10" high, similar to 4'-10" high windows indicated on 1st & 2nd fl. plans, for side elevation, 9/30/58
2294	1507-28th St. G. T. Garnett	Alterations	Recom'd., 9/24/58
2295	3001 Dent Pl. Kay Halle	Raise west garden wall with brick to match to 7' above yard grade	Recom'd., 9/30/58
2296	3150 Q St. Lenard Long	Make necessary repairs to open uncovered porch. No structural changes.	Recom'd., 9/30/58
2297	3336 Volta Pl. Theodore Chandler	Erect 2nd fl. addn. over 1st fl. in rear, & replace pres. wood steps at 1st fl. with brick.	Recom'd., 9/30/58
2298	1619-30th St. Langood Realty Co.	Green canvas awning, suspended from bldg. with fixed iron frames; non folding or hinged; no fixed posts.	Ret'd. with recom. that applicant be requested to submit new design for an awning that will cover exist. overdoor treatment, & preferably without exposed pipe hangers, 10/7/58
2299	3019 Dumb. Ave. J. H. Brogden	Install exterior door frame over front entr. door	Recom'd., 10/7/58
2300	2451 P St. Howell Walker	Alterations to entr. steps, minor chgs. in low garden wall, front door, etc.	Recom'd., 10/7/58
2301	1945 Wisc. Ave. Page Comm.-Engrs. Inc.	New 3-story, br. & concrete office bldg. & 6' chain link fence.	Recom'd. (Note: Fence not considered), 10/15/58
2302	3410 P St. S. M. Claggett	Install 2 new wmndows on east side of house	Recom'd., 10/7/58
2303	3053 M St. Sam. Levy	Parking lot attendant's shed, alum. siding	Recom'd., provided aluminum siding be painted white, & the roof shingles be gray, 10/13/58
2304	1100-29th St., Wash. Gas Light Co.	Renovate & air cond. part of 1st fl., incl. installation of new windows in exterior walls.	Recom'd., 10/13/58
2305	3310 Prospect St. Ralph Phillips	Remove exist. front porch & install. b stoop & erect	Recom'd., provided that areas of brickwork, exposed by removal of porch, be neatly treated to harmonize with rest of bri ork, 10/13/58

Alterations and additions to 2 storey brick dwelling. Slate roof. Timber floors & stairs. Plaster walls & ceilings. Timber sash windows. Concrete floor to basement. Timber floors to ground floor. Fibrous plaster cornices & ceilings to principal rooms. Timber doors. Tiled fireplaces. Gas & electric light throughout. Sanitary fittings to include 1 bath, 1 lavatory basin, 1 sink, 1 water closet. Hot water service from gas copper. Drainage to existing system.

Alterations

Brick built garage with corrugated iron roof.

Alterations

Erection of single storey brick dwelling house with slate roof. Timber floors. Plaster walls & ceilings. Timber doors & windows. Fibrous plaster cornices to principal rooms. Tiled fireplaces. Hot water service from gas copper. Sanitary fittings to include 1 bath, 1 lavatory basin, 1 sink, 1 water closet. Drainage to existing system.

Erection of single storey brick dwelling house with slate roof. Timber floors. Plaster walls & ceilings. Timber doors & windows. Fibrous plaster cornices to principal rooms. Tiled fireplaces. Hot water service from gas copper. Sanitary fittings to include 1 bath, 1 lavatory basin, 1 sink, 1 water closet. Drainage to existing system.

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5 November 1958

Dear Mr. Bartholomew:

I am writing in reply to Mr. William Finley's letter of October 15th, requesting the advice of the Commission of Fine Arts on moving the location of proposed Federal Office Building #10-A fourteen feet to the east, thus throwing it off the direct axis extended through the National Archives Building on the north side of the Mall.

At our meeting on 16 October, the members of the Commission concurred with the recommendation of the Coordinating Committee of the National Capital Planning Commission. Although we do not favor in general displacing the relationships established by the approved plans for the Mall area, we do not believe the proposed deviation will materially affect the overall appearance of the Mall.

For the Commission of Fine Arts:

Sincerely yours,

David E. Finley
Chairman

Honorable Harland Bartholomew
Chairman
National Capital Planning Commission
Washington 25, D. C.

Exhibit E

THE COMMISSION OF FINE ARTS

ESTABLISHED BY CONGRESS MAY 17, 1910

DAVID E. FINLEY, Chairman
DOUGLAS W. ORR
WALLACE K. HARRISON
FELIX W. de WELDON
WILLIAM G. PERRY
ELBERT PEETS
EMILY L. MUIR
LINTON R. WILSON, Secretary

5 November 1958

INTERIOR DEPARTMENT BUILDING
WASHINGTON

Dear Colonel Cook:

The Commission of Fine Arts considered the design of the proposed seal for the Administrative Office of the United States Court at its meeting on 16 October 1958.

The design was approved, although reluctantly, because of the urgency of the time factor in this instance.

The members asked me to write you that they considered the design as shown in the plaster model, dry and monotonous in composition. The relationship of the varying relief of the crossed symbols was confused and without well defined shading. The model was uncolored, and it was not possible to judge the finished effect of the seal in color. They do not believe that this is a design which can ever be pointed out with pride. This design is especially disappointing because we understand that the Judges of the Court for which this seal will be used have recently shown an awareness of good artistic judgment in their purchases of paintings and sculpture for the interiors of the Court House they occupy.

I am enclosing the above criticism for your information, and for guidance in preparing future submissions. I also plead again for early submission of sketch designs so the Commission can render effective advice.

Sincerely yours,

L. R. Wilson
Secretary

Lt. Col. James S. Cook, jr.
Chief, Heraldic Branch
Quartermaster Corps
Department of the Army
Washington 25, D. C.

Col Cook asked me not to send this letter. He stated that he had conveyed the gist of the letter to the officials of the Court, who had already acted on the matter without waiting for advice.
LRW

Exhibit F

7 November 1958

Lt. Col. James S. Cook, Jr.
Chief, Heraldic Branch
Quartermaster Corps
Department of the Army
Washington 25, D. C.

Dear Colonel Cook:

I was glad to talk recently with you, Colonel Nettles and Mr. Peters of the Air Force about the Air Force Distinguished Service Medal, and to relay to you the informal comments of the members of the Commission of Fine Arts on this subject at their meeting on 16 October 1958.

They thought that the colored drawings of the two designs and various ribbons were well delineated, but were unanimous that the design of the medal did not have sufficient merit for the highest peacetime medal of the Air Force. The use of so much colored enamel was questioned as perhaps being undignified, and the pose and stance of the eagle was not effectively indicative of the spirit the medal should portray.

Again the members stressed that the services of a fine sculptor appear necessary if the quality of the similar medals now used in the Army and Navy is equalled. We will be glad to assist further in this problem and believe that the end result will be worth all our efforts.

Sincerely yours,

L. R. Wilson
Secretary

Exhibit G

5 November 1958

Dear Mr. McConihe:

The members of the Commission of Fine Arts have asked me to write you of their great interest in the development of the design of the interiors for the State Dining Room area in the new State Department building now under construction between 21st and 23rd, C and E Streets, N. W.

Messrs. Orr, Harrison, Perry and Rapuano were glad to meet with Mr. Hunter and the designers informally in Philadelphia on 15 August, when the first sketch plans for these interiors were presented to them by the designers. At our meeting on 16 October 1958, we reviewed the two schemes that were presented at that time and reaffirmed the opinion which the four members gave you in August, that we preferred the trend of the design which stressed an open architectural treatment permitting the maximum utilization of the view over the Mall, to the tightly-enclosed design of Federalist inspiration. We do not believe that either sketch realized to any extent the possibilities inherent in a carefully studied relationship of the interior spaces with the views of and from the terrace and we accordingly recommend that the study of the design be pursued to develop such relationships with the utmost dignity and sensitivity. We hope further that sight will not be lost of the desirability of having whatever goes into the walls and furnishings of these spaces fully embodying the best of American inspiration and craftsmanship.

We will welcome the opportunity to study with you, either at our meetings or informal conferences, the further developments of the design and the decorative details.

For the Commission of Fine Arts:

Sincerely yours,

DRW

David E. Finley
Chairman

Honorable F. Moran McConihe
Commissioner, Public Buildings Service
General Services Administration
Washington 25, D. C.

Exhibit H